IN THE SUPREME COURT OF THE UNITED STATES

MAR 1 9 1984
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SUPREME COURT, U.S.

CHARLES G. STRICKLAND, Warden,
Florida State Penitentiary,
LOUIE L. WAINWRIGHT, Secretary,
Department of Corrections, and
JIM SMITH, Attorney General,
State of Florida,

Petitioners,

vs.

AMOS LEE KING, JR.,

Respondent.
_____/

CASE NO. _____

83-1287

BRIEF OF RESPONDENT ON JURISDICTION

Comes now Amos Lee King, Jr., respondent, by his undersigned attorney, and submits this response to the brief of petitioners on jurisdiction, stating:

I. QUESTION PRESENTED BY PETITIONER

"Whether The Continued Rejection Of The Florida Supreme Court's Standard Of Sixth Amendment Assistance Of Counsel By The Court Of Appeals Requires This Court's Intervention And Ultimate Resolution Of The Conflict As In The Pending Case Of Strickland v. Washington, Case No. 82-1554."

II. OPINIONS BELOW

Petitioners' account of the applicable opinions below is accurately represented on page one of their brief on jurisdiction.

III. JURISDICTION

Petitioners are attempting to invoke the discretionary jurisdiction of the Supreme Court pursuant to Title 28 U.S.C. §1254(1).

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioners' statement as to the applicable constitutional and statutory provisions found on pages three and four of their brief on jurisdiction is correct.

V. STATEMENT OF THE CASE

Petitioners' account of the history of the case and some of the facts as presented at pages four through 11 of their brief on jurisdiction are accurate. However, beginning on page 12 of the brief, petitioners' version of the "...facts material to consideration of the question presented..." is incomplete and inaccurate. Thus, respondent sets forth below the truly shocking facts of the case which make it obvious that the respondent was denied constitutionally effective assistance of counsel at the penalty phase during his state court trial applying even the lowest standard of competency of a trial lawyer.

Assistant Public Defender Thomas A. Cole, deceased, represented respondent at the penalty phase.(P 122)[1] It was his first capital case. (P 122) Petitioners infer that Mr. Cole was aided by Assistant Public Defender Anthony Rondolino "... in the preparation of this case for trial...in a limited manner." (Petitioners' brief at 15) However this assistance did not include the penalty phase of the trial. (P122, 123, 174; R 2015-2035)

Mr. Cole neglected to even discuss the penalty phase with the respondent. Thus Mr. Cole told the state trial judge, "... I haven't spoken to the death penalty to the client..." (P184; R 1822)

Nor did Mr. Cole bother to talk to any of the six mitigation witnesses that the respondent had tried to have Mr. Cole contact prior to trial (a list of these witnesses was found by Mr. Rondolino in Mr. Cole's working file; P 136, 137). In this regard Mr. Cole told the trial judge immediately before the penalty phase of the trial began:

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1. The letter "P" refers to the transcript of the state habeas corpus hearing. "R" refers to the record on appeal in state court. All underlined emphasis is supplied unless otherwise indicated.

I (Mr. Cole) want a day, give me a day's delay so I can speak to the witnesses. (R 1822; P 184-186)

He also stated:

I need time to talk to the witnesses. (R 1834)

When asked why Mr. Cole failed to muster anything more than a semblance of a defense for the respondent in general, attorney Patrick Doherty[2] testified during the state court habeas corpus hearing:

Q. (By Mr. Harrison) Did you actually see him during this time?

A. Yes, I did.

Q. Would you describe his--the way he looked?

A. He (Mr. Cole) was physically exhausted. Well, first of all, he was physically exhausted, and that was obvious before he mentioned, even mentioned it. He did tell me that as well. I might point out, four days before the trial, I believe, he lost his glasses. (P 187)

The reason Mr. Cole was exhausted was not because he had been preparing the Amos King case for trial. On the contrary, the several months prior to trial were dominated by another legal matter. In this regard Mr. Doherty testified:

Q. Would you please explain to His Honor the degree to which Mr. Cole was involved in the Scott case while the Amos Lee King case was pending?

A. Well, I think His Honor probably remembers full well. I think this judge tried that case, but at any rate, Scott was first tried on May 17 of 1977, and he was charged with some kind of burglary wherein the victim of the burglary was stabbed with a fondue fork through her nose into her brain, causing her to be permanently amnesiac, causing her to be obviously permanently injured. The thrust of Mr. Cole's involvement in that case arose out of this set of circumstances.

Mr. Scott was, according to my recollection, given three different polygraph tests which he passed and indicated that he was innocent on three different occasions. Mr. Cole fervently believed in

2. Mr. Doherty, an experienced criminal trial lawyer, testified on behalf of the respondent regarding his claim of ineffective assistance of counsel.

> this person's innocence, this man protested his innocence at every turn in the road. This was probably the biggest case Tom Cole ever had as a criminal lawyer. He worried about it day and night and it was in that set of circumstances that the Amos Lee King case was being prepared, if it was being prepared.
>
> In other words, what I am saying to you, at every turn in the road, Amos King's case was being overshadowed by the Scott case. It was a consuming interest of Mr. Cole. It was tried all the way to mistrial on one occasion. It was reset for trial, I believe, on June 22, 1977. It was tried up until June 24, 1977. Mr. Cole reached the apogee of his career, in most people's estimation, that day. Mr. Scott was found not guilty 11 days later. This case was kicked over for trial, I believe.
>
> Q. Do you feel that that involvement in the Scott case was prejudicial to Mr. King in terms of Mr. Cole's attention to the King case?
>
> A. Yes, not only do I feel that, but I feel that the record speaks eloquently to that point on about five different occasions. Mr. Cole indicated that he was exhausted and that he didn't know what was going on and that he was tired, he needed to go home, go to sleep. If you want, I can cite the record to that effect, and I would be more than happy to do that. (P 183, 184)

Mr. Rondolino acknowledged Mr. Cole's commitment to the Scott case when he testified that he (Cole) was:

> ...devoted to that case to the extent of being involved emotionally, psychologically, mentally, pressing forward all of his efforts to the Scott case. (P 126)

And Mr. Cole himself made it clear that, as a result of his involvement in the Scott case, he had neither the time nor the energy to adequately assist the respondent. Thus, as summarized by Mr. Doherty, Mr. Cole[2] is quoted as telling the state trial court:

> A. ...starting on page 2149, he says as an officer of the court, I cannot give Amos Lee King a fair trial today or this week. Now, that was at a pre-trial motion to continue. No one made any even passing

2. For clarity, Mr. Doherty, testifying during the state court habeas corpus hearing, is quoting Mr. Cole from the original trial record.

reference to that. The importance of that is that he stated it as an officer of the court, and the importance is that he is telling the Court this is no joke, I am not fooling around, period.

Now, on page 2075 of the record, he says I cannot effectively communicate with him, meaning Mr. King here, I cannot effectively communicate with him to prepare adequately to represent him, would renew my motion to withdraw.

On page 1621, he says I don't know what is going on now.

On page 1643, he moves for a mistrial, and then evidently forgets why he moved for a mistrial and says he--I don't know the circumstances of moving for mistrial.

On page 1713 of the record, he says, I can't think anymore.

On page 1812 of the record, he says, Judge, I am beat, I need some sleep.

On page 1839 of the record, the record pretty well discloses during the course of the jury charge conference, Tom was writing his closing argument.

On page 1822 of the record, he says that I haven't spoken to the death penalty to the client, I want a day, give me a day's delay so I can speak to the witnesses. The Court says we are not going to delay, we are going ahead now.

He says again on 1834, I need time to talk to the witnesses.

On page 1713 of the record, he says I have got a long cross-examination, I can't think any more. At one point, he asked for a proffer--

THE COURT: Wait a minute. At that point, did he not receive a recess, Mr. Doherty?

MR. DOHERTY: No, I think at that point, Judge, Doug Prior turned to you and said Mr. Cole always does this in all his trials and this is--essentially, he is saying Mr. Cole is lying. I didn't see any notation of a recess at that point.

THE COURT: What witness was it that he was preparing to cross-examine?

MR. DOHERTY: I believe I would have to look at the record to tell you about that.

THE COURT: How about checking to see if it was not Dr. Wood, and further, he received a recess when requested, the last

witness.

MR. DOHERTY: I understand that the record--is the record in evidence?

THE COURT: I don't know what is here, frankly. Everything that is here is in evidence.

MR. DOHERTY: Now, on page 1774, he says--this is probably the most interesting one he made, on page 1774 of the record, he says I can't think, Judge, of what I am doing. At that point, Mr. Rondolino turns to the judge and says, apparently Mr. Cole is tired. Now the fact of the matter is that in this setting, we are all talking about Mr. Cole and the fact that he is exhausted and everybody, of course, in this whole setting knows why he is exhausted, because he just finished the Scott trial 11 days earlier. (P 184-186)

Thus, the record as carefully referenced above establishes beyond doubt that Mr. Cole lacked more than just the experience necessary to effectively represent the respondent at the penalty phase. In addition, Mr. Cole was physically and emotionally exhausted as a result of the two Scott trials which immediately preceeded the respondent's. His overriding concern for Mr. Scott (to the exclusion of the respondent) and his extraordinary labors during Mr. Scott's trials left him with neither the time to prepare for nor the energy to effectively participate in the sentencing phase of the respondent's trial.

For reasons of their own, the petitioners would have the court ignore this most relevant aspect of the case. Instead they try to downplay the situation by claiming merely that, "...Mr. Cole informed the Court that he would appreciate a night to relax." (The petitioners' brief at 12) Mr. Cole's diminished condition and resulting failure to prepare for the penalty phase was not lost on the court of appeals,

however, as noted specifically in its opinion (See petitioners' brief citing the court of appeals' opinion at A 22-24).

Mr. Cole called one character witness during the penalty phase, a minister and former employer of respondent in the gardening business, who testified that respondent was a good worker and non-violent. (R 2028-2030) Mr. Cole also mentioned to the jury that several other individuals (another former employer and a corrections officer) who knew the respondent felt he was a good worker and well behaved. (The court of appeals' opinion in petitioners' brief at A 44, 45) However, as the court of appeals noted "...it is clear that (Mr. Cole) neglected to present other available evidence" at the penalty phase. (The court of appeals opinion cited in petitioners' appendix at A 46).

The court below was referring to Mr. William Brown, Jr. who testified at the state court habeas corpus hearing that he knew and thought extremely well of the respondent in 1977. (P 234, 235) He also stated:

> Q. (By Mr. Harrison) Okay. Sir, if you had been asked to appear in court to testify in his behalf as to his character in July, 1977, would you have been able and willing to do so?
>
> A. Yes.
>
> Q. Were you called to testify in that regard for him?
>
> A. No, I weren't, but I was subpoenaed to court, but I didn't have no--do no testifying. The lawyer told me he didn't need me.
>
> Q. Who was that?
>
> A. I don't know his name. I don't know the lawyer's name.

Q. You were subpoenaed by Mr. Cole?

A. Yes, I guess that was him.

Q. All right, sir. But did you come to court like you had been subpoenaed to do?

A. Yes, I was here in court.

Q. And would you have testified if Mr. Cole had put you on the stand?

A. I would have. (P 236)

Mr. Willie Scott, another acquaintance of the respondent's, testified at the habeas hearing in the same vein. (P 238-241)

Mr. Brown noted that there were many other people who would have testified in the respondent's behalf had they merely been asked. (P 237) This fact is confirmed by Mr. Rondolino who testified (as mentioned above) that he found in Mr. Cole's working file a list of six character witnesses only one of whom actually testified for the respondent during the penalty phase of the trial. (P 136, 137)

Mr. Rondolino acknowledged that the respondent was not afforded adequate legal representation at the penalty phase when he said:

Q. (By Mr. Harrison) What about the preparation that went into the sentencing phase of this trial? Do you think that was adequate?

A. Well, in retrospect, it does not appear to be.

Q. Why do you say that?

A. Simply because of the number of witnesses that could have been called that weren't, and because of my involvement in cases since that time, it would have been handled in a different manner. (P 144)

Mr. Doherty testified that Mr. Cole's representation of the respondent at the penalty phase was a substantially serious deficiency which fell measurably below that of competent counsel. (P 214) In this regard it is

worth mentioning that Mr. Cole concluded his representation of the respondent by virtually acknowledging to the jury and judge that the state had proven "beyond a doubt" an aggravating circumstance (that the crime was especially heinous, atrocious or cruel) sufficient to send the respondent to the electric chair under Sec. 921.141(5)(b), Fla. Stat. (1975). Mr. Cole also indicated to the jury and judge his less than voluntary association with the respondent and his personal revulsion as to the alleged capital offense. Thus Mr. Cole argued:

> It is extremely difficult for me to talk to you at this time. This is the first time that I have ever been in a position like this. I have been practicing law for three years now, Assistant Public Defender, and I have never defended a murder case before. I think that you all understand that the job I had to do this week and you can appreciate what I had to do.
>
> You can convict Amos of a cruel and evil crime. There is no doubt about it. Murder upsets me very much and I am also human, I have feelings, I have been to Raiford which is the State Prison. (ROT 2031, 2032)

Even when one reads these comments in the context of Mr. Cole's entire (skimpy) closing argument at sentencing, it is clear that he unabashedly conceded that the state had proven "beyond a doubt" one of the aggravating factors ("the commission of a cruel and evil crime"; ROT 2031 and Sec. 921.141 (5)(b), Fla. Stat.) that the state had to establish in order for the jury to recommend (and for the trial judge to be able to sentence the respondent to) death! Further, it is obvious that Mr. Cole was effectively stating that he had been representing the respondent on a reluctantly appointed basis regarding an offense which he (Cole) believed was repre-

VI. THE REASONS FOR DENYING THE WRIT PETITION

Petitioners argue that the court should grant certiorari review in the instant case for the same reason that it granted certiorari in Strickland v. Washington, this court's Case No. 82-1554. That is, the petitioners argue that since the court of appeals in the case at bar applied the Fifth U.S. Circuit Court of Appeals standard of ineffectiveness of counsel (as announced in Washington v. Strickland, 693 F.2d 1243 (5th Cir. 1982)) as opposed to the Florida Supreme Court standard (as announced in Knight v. State, 394 So.2d 997 (Fla. 1981)), the court of appeals' opinion in the case at bar should be reviewed in order to resolve the "conflict" between the two standards. (Petitioners' brief at 18-23)

Petitioners are in error because they admit later in their brief on jurisdiction (at page 24) that the court of appeals actually applied the more stringent elements of the "Knight" standard in the case at bar.

In Washington v. Strickland, supra, the en banc court of appeals specifically rejected the "outcome-determinative" test for prejudice regarding ineffective assistance of counsel claims (693 F.2d at 1278). Instead, the court of appeals held that, while it is not necessary for the defendant to prove that his counsel's ineffectiveness prejudiced the outcome[3] of the proceedings, it is necessary for the defendant to show that counsel's ineffectiveness "... resulted in actual and substantial disadvantage to the course of his defense " (693 F.2d at 1262).

3. "We believe that where the petitioner has shouldered the considerable burden of showing a violation of his sixth amendment rights that resulted in actual and substantial disadvantage to his case, it is inequitable to encumber him with the further responsibility of showing that the disadvantage determined the outcome of the entire case" (693 F.2d, 1262).

Florida's "Knight" standard, on the other hand, embraces the "outcome-determinative" test by requiring the defendant to "... demonstrate a prejudice to the defendant to the extent that there is a likelihood that the deficient conduct affected the outcome of the proceedings." Knight v. State, 394 So.2d 997, 1001 (Fla. 1981).

On page 24 of petitioners' brief on jurisdiction, they admit that the court of appeals employed Florida's "outcome-determinative" test in the case at bar. Thus, petitioners state flatly:

> Based on the material facts presented herein, the Eleventh Circuit squarely held that King's lawyer rendered ineffective representation at the sentencing phase of the trial and that the representation created both factual and substantial disadvantage to the course of the defense and a great likelihood that counsel's inadequacy affected the outcome of the trial.

This is consistent with the testimony of Mr. Doherty that Mr. Cole's ineffectiveness during the penalty phase and otherwise negatively affected the outcome of the trial. (P 209-211) This is also consistent with the fact that the court of appeals did not cite Washington v. Strickland, 693 F.2d 1243 (5th. Cir. Unit B 1982) regarding the penalty phase of respondent's trial except for a general proposition regarding "... the importance of pre-trial preparation and investigation."

Since the court of appeals "squarely" applied the "outcome-determinative" test in the case at bar according to petitioners, how can they complain? This is after all the "Knight" standard that they argue is the correct one to employ in determining claims of ineffective assistance of counsel in the first place.

Stated slightly differently, this is not a case which falls within the parameters of Rule 17.1(a),

Rules of the Supreme Court of the United States, providing that the court may "... for special and important reasons..." grant certiorari "... when a federal court of appeals ... has decided a federal question in a way in conflict with a state court of last resort..." According to petitioners, the court of appeals did not apply federal law which conflicts with state law. The court of appeals merely reached a factual conclusion with which petitioners disagree. This disagreement however is not a basis for granting petitioners the relief they seek. In this context, as has been said on numerous occasions by members of this court, the Supreme Court is not primarily concerned with the correction of errors in lower court decisions. As former Chief Justice Taft wrote:

> The jurisdiction (of the Supreme Court to review cases by way of certiorari) was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80% of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ. Magnum Co. v. Coty, 262 U.S. 159, at 163 (1923).

In truth, the court of appeals in the case at bar based its decision to a great extent upon the factually similar case of Goodwin v. Balkcom, 684 F.2d 794 (11th. Cir. 1982), cert. denied ___U.S. ____, 103 S.Ct. 1798,76 L.Ed. 2d 364 (1983). In Goodwin the court appointed attorney failed to prepare adequately for trial. This included not interviewing important witnesses (similarly Mr. Cole failed to timely interview mitigation witnesses which could have been used effectively during the penalty phase) and generally failing to protect the defendant's interests during the penalty phase.

the client as follows:

> To better understand the reasons for trial counsel's ineffective preparation, investigation and handling of this case, an examination of the testimony presented to the state habeas corpus court and comments made during trial is revealing. The Walton County Superior Court appointed counsel and co-counsel to represent Goodwin. Addressing the jury during opening argument and again in the sentencing phase of trial, both counsel and co-counsel alerted the jury to the fact of their appointed status. Counsel justified the reasons for doing so in his state habeas corpus deposition:
>
> Q. I notice that either you or (co-counsel) in your argument made it clear to the jury that you were appointed.
>
> A. Yes, sure.
>
> Q. Why did you do that?
>
> A. Well, you have to live out here.
>
> Q. I'm not sure I understand, sir.
>
> A. Well, as I say--if you're not a country boy--you live in the community and you get a reputation of representing, I got that around here for a while, of representing everybody that killed somebody. Well, they don't like you. They don't realize that everybody's entitled to a defense. It's just human nature, I suppose.
>
> The state interprets the references to appointed status as nothing more than a legitimate trial tactic aimed at soliciting sympathy from the jury. This interpretation is difficult to accept in light of the reason given by trial counsel. Goodwin, on the other hand submits that this type of attitude explains why counsel failed to challenge the composition of the grand and petit juries, neglected to object to Witherspoon violations, and failed to object to the use of leading questions by the prosecution. We tend to agree with Goodwin, but our reasoning goes further. Admitted concerns over community ostracism do more than inhibit a lawyer's actions at trial where his performance is visible by fellow citizens. An attitude such as this impairs the vitality of investigation, preparation and representation that all clients deserve, indigent or otherwise. Fears of negative public reaction to the thought of representing

> Moreover, reminding a jury that the undertaking is not by choice, but in service to the public, effectively stacks the odds against the accused. Although we deplore the sentiments expressed by Goodwin's trial counsel, we cannot overemphasize that the culpability of counsel is not the issue. Rather, our concern centers on the sixth amendment right of the defendant. 684 F.2d at 805, 806

Similarly the court of appeals in the case at bar determined:

> Although Cole presented some mitigating evidence, it is clear that counsel neglected to present other available evidence. The record also suggests this failure cannot be deemed a strategic decision taken after a reasonable investigation into the alternatives. This Court has emphasized the importance of pretrial preparation and investigation. See Washington v. Strickland, 693 F.2d 1243, (5th Cir. Unit B 1982) (en banc), cert. granted, ____ U.S. ___, 103 S.Ct. 2451, 76 L.Ed.2d ___ (1983); Goodwin v. Balkcom, 684 F.2d at 805-805, cert. denied, ___ U.S. ___, 103 S.Ct. 1798, 76 L.Ed.2d 364 (1983); Rummel v. Estelle, 590 F.2d 103, 104-105 (5th Cir. 1979). Here, counsel admitted he was unprepared for the penalty stage of the trial, because he had not adequately discussed sentencing with his client nor had he carefully searched for mitigating evidence.
>
> These errors occurred at a particularly critical point in the trial.
>
> > The sentencing stage of any case, regardless of the potential punishment, is "the time at which for many defendants the most important services of the entire proceeding can be performed." ABA Standards on the Administration of Criminal Justice, Sentencing Alternatives and Procedures §5.3(e). The special importance of the capital sentencing proceeding gives rise to a duty on the part of defense counsel to be prepared for that crucial phase of the trial. Stanley v. Zant, 697 F.2d at 963.

Although this Court apparently has never

held counsel ineffective in a capital case solely because of failure to present mitigating evidence, see id. at 964, it has on a number of occasions cited this failure as one factor suggesting ineffectiveness. See Young v. Zant, 677 F.2d 792, 799 (11th Cir. 1982); Kemp v. Leggett, 635 F.2d 453 (5th Cir. 1981); Mason v. Balkcom, 531 F.2d 717, 724 (5th Cir. 1976).

As in those cases, counsel here did not merely neglect to present available mitigating evidence. He made a closing argument that may have done more harm than good. In his argument, the main thrust of which was that the defendant if given life would be secured in prison for many years, King's attorney unnecessarily stressed the horror of the crime and counsel's status as an appointed representative:

> It is extremely difficult for me to talk to you at this time. This is the first time that I have ever been in a position like this. I have been practicing law for three years now, Assistant Public Defender,and I have never defended a murder case before. I think that you all understand that the job I had to do this week and you can appreciate what I had to do.
>
> You can convict Amos of a cruel and evil crime. There is no doubt about it. Murder upsets me very much and I am also human, I have feelings, I have been to Raiford which is the State Prison.
>
> Now you might not think that Amos deserves to live in our society of civilized people. You might not consider him right now as a human being and what you convicted him of was an evil and gross crime but I am not asking you to put him back out on the streets or take a chance that he will ever be back out there because in Florida the legislature passed a law which means that when you convicted a man of first degree murder if you don't if he is not sent to the electric chair, then he automatically goes to prison for life and for twenty years he is not eligible for parole. He is not eligible

> for parole. He will be in maximum security at Raiford, not a work release center.
>
> In effect, counsel separated himself from his client, conveying to the jury that he had reluctantly represented a defendant who had committed a reprehensible crime. "(R)eminding a jury that the undertaking is not by choice, but in service to the public, effectively stacks the odds against the accused." Goodwin v. Balkcom, 684 F.2d at 806, cert. denied, ___ U.S. ___, 103 S.Ct. 1798, 76 L.Ed.2d 364 (1983). Rather than attempting to humanize King, counsel in his closing argument stressed the inhumanity of the crime.
>
> We hold that this argument in combination with counsel's failure to present available mitigating evidence denied King effective assistance of counsel at the penalty phase of the trial. (See Petitioners' brief at A46-50).

VII. CONCLUSION

This court denied certiorari in Goodwin v. Balkcom, supra, and based on that case the court should deny the petition for certiorari here. It is obvious that the respondent was used as a guinea pig in order that his inexperienced, over worked, exhausted, reticent assistant public defender might cut his teeth on his first capital case. This great court should not lend dignity to the travesty of justice that followed by granting petitioners relief.

Respectfully submitted,

Baya Harrison

BAYA HARRISON
Attorney for Respondent
317½ East Park Avenue
Tallahassee, FL 32301
(904) 224-9887

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Michael J. Kotler, Esq., Assistant

Attorney General of Florida, counsel for petitioners, Park Trammell Building, 1313 Tampa Street, Suite 804, Tampa, Florida 33602 by regular U.S. Mail this 17th day of March, 1984.

Baya Harrison

BAYA HARRISON

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

CHARLES G. STRICKLAND, Warden,
Florida State Penitentiary,
LOUIE L. WAINWRIGHT, Secretary,
Department of Corrections, and
JIM SMITH, Attorney General,
State of Florida,

Petitioners,

83-1287

-vs-

AMOS LEE KING, JR.,

Respondent.
_____/

RESPONDENT'S MOTION TO PROCEED
IN FORMA PAUPERIS

Comes now Amos Lee King, Jr., respondent, by his undersigned attorney, and moves the court to allow him to proceed in forma pauperis and for other relief, stating:

1. The respondent is indigent and insolvent as evidenced by the attached affidavit the terms of which are incorporated herein.

2. The respondent does not have the funds to print and distribute responses to the petitioners' jurisdictional brief.

WHEREFORE the court is requested to allow respondent to proceed in forma pauperis and, among other things, to submit limited numbers of copies of his briefs on regular 8 by 11 1/2 inch white paper as opposed to having the briefs printed.

Respectfully submitted,

Baya Harrison

Baya Harrison, Esquire
Attorney at Law
317½ East Park Avenue
Tallahassee, FL 32301
(904) 224-9887

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished to Michael J. Kottler, Assistant Attorney General, Counsel for the Petitioners, Department of Legal Affairs, Office of the Attorney General, Park Trammell Building, 1313 Tampa Street, Suite 804, Tampa, FL 33602 by regular U.S. Mail, this 22nd day of February, 1984.

Baya Harrison

Baya Harrison

RECEIVED
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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES G. STRICKLAND, Warden,
Florida State Penitentiary,
LOUIE L. WAINWRIGHT, Secretary,
Department of Corrections, and
JIM SMITH, Attorney General,
State of Florida,

Petitioners,

83-1287

vs.

AMOS LEE KING, JR.,

Respondent.
_____/

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED IN FORMA PAUPERIS

I, Amos Lee King, Jr., being duly sworn, depose and say that I am the respondent, in the above-entitled case; that in support of my motion to proceed herein without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor:

I further swear that the responses which I have made to the questions and instructions below relating to my inability to pay the cost of responding to the petition are true.

1. I am not employed. I was last employed at Nellie Kelly's Restaurant and the salary per month that I received was about $320.00.

2. I have not received any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or any other source within the last twelve months.

3. I do not own any cash or checking or savings account.

4. I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property.

5. I have no dependants to support.

6. I am presently incarcerated at Florida State Prison near Raiford, Florida under the supervision of the Department of Corrections, State of Florida.

7. I have been so incarcerated after being convicted of first degree murder and other offenses from Circuit Court of the Sixth Judicial Circuit in and for Pinellas County in Case No. 77-1696 in July of 1977.

8. I am and have been since my incarceration totally and completely indigent and insolvent.

9. My total assets are $1.00.

10. The total value of all my wordly assets and possessions is less than $10.00.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Amos Lee King Jr.
AMOS LEE KING, JR.

Subscribed and Sworn to before me this 21st day of February, 1984.

Bernice J. Jennings
NOTARY PUBLIC
My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing affidavit has been furnished to Jim Smith, Attorney General, State of Florida, The Capital Complex, Tallahassee, FL 32301 by regular U.S. Mail, this 14th day of March, 1984.

Baya Harrison